Item 1

To elaborate on the background for increasing penalty for harassment of tenant and unlawful eviction and to give further details of the cases on tenant harassment.

(a) Under the current section 119V of the Landlord and Tenant (Consolidation) Ordinance (the Ordinance) (Cap. 7), any person who unlawfully deprives a tenant of occupation of the premises is liable on a first conviction up to a fine of $500,000, and on a second or any subsequent conviction, to imprisonment for 12 months.

(b) The Administration proposed in the Landlord and Tenant (Consolidation) (Amendment) Bill 1999 to increase the maximum penalty to a fine of $500,000 and imprisonment for 12 months on a first conviction, and on a second and subsequent conviction to a fine of $1,000,000 and imprisonment for 3 years. Before the Bill 1999 was srutinised by the Legislative Council, it had lapsed after the end of the legislative session of 1999-2000. The Bill (including the unchanged proposed section 119V) with additional improvement proposals was then re-introduced to the Legislative Council in June last year as the Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

(c) The revised penalties were proposed in response to the public's concern over harassment acts and request of the Legislative Council for heavier punishment for such offences. Although the harassment activities are less proliferating in recent years, harassment of tenants is a serious offence and should be addressed

with proper weight despite short term fluctuations in the property market. The proposed punishments are appropriate to deter such offences.

(d) For the details of the harassment cases furnished to the Bills Committee in the LC Paper No. CB(1) 2236/01-02, District Court library advises that except the case DCCC 1274 of 1993, all other cases are closed files and no copy is kept.

(e) Details of the case DCCC 1274 of 1993 and another case for discussion are at **Annex A**.

Annex A

Cases of Harassment of Tenants

(I) **DCC 1274 of 1993**

(a) The first defendant, the landlord of the premises (the second, the third and fifth floors of the building) in question, brought along with a number of co-defendants to the premises and uttered threat in a friendly manner to the tenant relating to the personal safety of the tenant's child. After the visit of the defendant, the water supply of the concerned premises was cut off and some telephone lines were severed on different occasions and dates.

Criminal intimidation

(b) The judge found that though the threat uttered in a friendly conversation, the purpose of the first defendant bringing other defendants to the premises, the aim to discourage the tenant to hold on to the premises and her intention to alarm the tenant with the threatening remarks amounted to criminal intimidation. The judge was satisfied that the first defendant had committed the offence out of greed and was not likely to repeat the offence, and as she had two young children to look after, the judge suspended the six months term of imprisonment for eighteen months.

(c) The second defendant was engaged in the conversation in which the first defendant uttered the threat to the tenant. The judge found that though he was acting in concert with the first defendant

to discourage the tenant from staying on, there was no evidence that he had done anything to associate himself with the plan of eviction when he heard the threats. The judge gave the second defendant benefit of the doubt and acquitted him of the charge.

Harassment of tenants

(d) An hour after the visit of the first defendant and the co-defendants, the water supply to the two flats was cut off. The judge found that the water supply could be cut off simply by turning a stop-cock outside the premises. Because of the ease of turning off the water supply and the time lag of more than an hour, the judge found that the harassment was not proved beyond all reasonable doubt and the first defendant was acquitted of this charge.

(e) The tenants changed the lock of the main door to deny access of the first defendant to the flats. The lock was later replaced with a new lock by the third defendant. When the third defendant gave copies of keys to one of the tenants he said something to the effect that he then had access to the flat. The judge held that what the third defendant had done did not constitute harassment because the first defendant as a landlord had retained her right to enter the other parts of the flat, it was legitimate for the third defendant acting as the agent of the first defendant to regain access to the premises in the way he did.

(f) The fourth, sixth, seventh and eighth defendants had cut off the electricity supply for the second, third and fifth floors of the building, and cut off the telephone services in two of the victims'

premises. The judge held that as all the defendants were first-time offenders of harassment, the only option available for the judge was a fine under section 119V of the LTO and as all of them had income not exceeding $20,000 per month, the penalty should not be exceeding their ability to pay. As a result, the sixth, seventh and eighth defendants were fined $2,000 for per conviction of two charges and $10,000 for conviction of one charge. The fourth defendant was fined $2,000 for per conviction of three charges.

(II) **Civil Appeal No. 299 of 1996**

For the purpose of discussion for harassment on tenants, the Administration has retrieved another relevant case of Civil Appeal No. 299 of 1996 from the Magistracy in the Supreme Court of Hong Kong. The facts are as follows:

(a) In that case the Respondents were four tenants living in the same premises with two toilets of squat down type for use by them. The Appellant sealed both of the toilets and provided the Respondents with spittoons for their use. The toilets were later demolished. As claimed by the Appellant, what he did was following instructions of the Community Relations Bureau of the Police. Three months later, the toilet was replaced with a western type toilet.

(b) In the Magistracy, the prosecution case was that the demolition of the toilet was done with intent to deprive the tenants of a service reasonably required for occupation of the premises as a dwelling

and therefore constituted harassment under section 119V of the LTO.

(c) In the appeal to the Supreme Court, the Appellant argued and the prosecution agreed that no specific intent as under section 119V(2)(a) or (b) was proved beyond reasonable doubt. The convictions were quashed and the sentence set aside. The case was remitted to the Magistracy for a retrial before another magistrate.

Item 2

To reduce the fees in relation to services by bailiff, consideration should be given to putting in place a new mechanism by which bailiff will only be asked to provide the valuation of properties left in repossessed premises by tenant so that it will be for the landlord to decide on the manner how such properties shall be disposed of.

(a) According to the Judiciary Administrator, bailiffs are in practice performing duties loosely similar to inventory taking and valuation of the properties on the premises to facilitate repossession. If bailiffs are duly empowered by legislation to valuate the properties left in repossessed premises, it might be possible to implement the proposal as suggested.

(b) The Administration will explore the desirability and feasibility of the proposal further.

Item 3

To include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants should be reviewed in the context of the comprehensive review of the security of tenure provisions under the Landlord and Tenant (Consolidation) Ordinance (Cap.7). The involvement of the sub-tenants in the legal proceedings at which the principal tenant is in default of rent payment should also be considered.

As requested by the Bills Committee, the Administration undertakes to further review the issues of provision of false information by tenants and the involvement of sub-tenants in the legal proceedings at which the principal tenant is in default of rent payment, in the context of the comprehensive review of the security of tenure previsions under the Landlord and Tenant (Consolidation) Ordinance.

Item 4

To include in proposed section 144 that provisions under the Bill would only apply to new tenancy agreements signed after the enactment of the Bill.

(a) Provisions of the Bill that should only be applicable to new tenancy agreements signed after the enactment of the Bill are so specified in the proposed section 144 of the LTO.

(b) The Administration is aware that the implied forfeiture clauses newly moved under Clause 11 of the Bill should be applicable only to new tenancy agreements signed after the enactment of the Bill. A provision of such effect is under preparation to be included in the proposed section 144.

Item 5

To follow up the review of internal guidelines on the handling of tenancy disputes by Police and keep members informed.

The Administration is following up with the Police on the review of the internal guidelines on handling of tenancy disputes, and will keep Members informed of the development.

Item 6

To redraft Clause 11 along the line of BMO.

The revised Clause 11 is at **Annex B**.